

KANSAS DEPARTMENT OF AGRICULTURE
Division of Water Resources

M E M O R A N D U M

TO: Files

DATE: August 20, 2024

FROM: Leslie Ireland

RE: Water Right,
File Nos. 3,351; 4,814; 8,240; 17,102 & 22,167

Keegan Nairn on behalf of Nairn & Nairn Farms as owners of the referenced water rights have filed applications for approval to change the points diversion under the referenced files authorized for irrigation use. The applications received on November 29, 2023, are located in the North Fork of the Cimarron River Basin, Stanton County and are within Southwest Kansas Groundwater Management District No. 3.

The referenced water rights appear in compliance with K.S.A. 82a-718 and K.S.A. 82a-732, and the applications comply with K.A.R. 5-5-2a. It appears no notice per K.S.A. 82a-1906, is needed as the only well in the notification area is under the same ownership.

The proposal requests to move files between existing point of diversion, specifically moving the quantity and rate under one of the three wells authorized under File Nos. 3,351; 4,814; 8,240 & 17,102 to the East to the sole well authorized under File No. 22,167 and its quantity and rate to move to the West to the well of File Nos. 3,351; 4,814; 8,240 & 17,102. It is essentially a "flip-flop" of the rights between existing wells. All of the referenced files were certified prior to 2000 and all irrigate the same 1,080.93 acres.

The three(3) wells under File Nos. 3,351; 4,814; 8,240 & 17,102, have a complete overlap in point of diversion with each file having a blanket rate and quantity with the most junior file limited to 5,018 gallon per minute (gpm) (11.18 c.f.s) and 1,842.66 acre-feet (AF) per year with all of the referenced senior files. File No. 8,240 is also limited to 5,018 gpm and 1,842.66 AF with File Nos. 3,351 & 4,814. These wells are all located more than 2,640 feet apart along the Westside of Section 6 (Well ID 4 & 6) & Section 7 (Well ID 1) in Township 29, Range 39 West (6-29-39W). Review of the existing wells would indicate the well located in the Southwest Quarter is more accurately described as being in Lot 7 SW $\frac{1}{4}$ SW $\frac{1}{4}$ of 6-29-39W, approximately 848' N and 4,503' W of the Southeast corner not the current qualifiers of NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ as currently listed. The approvals will update the files qualifier description.

The proposed changes under the four senior files request a 2,419 foot move of the most North well in Section 6 (ID 4) that is located in Lot 4, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of 6-29-39W, approximately 4,000' N and 4,944' W of the Southeast corner to the well authorized by File No. 22,167, (ID 5) located in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, approximately 4,536' N & 2,579' W of the SE corner of 6-29-39W. A 2021 well measurement of the well identified as ID 4, was reported to be 550 feet deep.

File No. 22,167 authorizes only one well. The change in point of diversion requested for this file proposes to move its authorized 1,015 gpm (2.26 c.f.s) and 319.2 AF per calendar from the well identified as being approximately 4,536' N & 2,579' W of the Southeast corner of Section 6 (ID 5) further defined as in the Southwest Quarter of the Northwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$) of 6-29-39W. Review indicates this well is in Lot 2 of the (NW $\frac{1}{4}$ NE $\frac{1}{4}$) and will be updated. The quantity and rate authorized by this file have no additional limitations with the referenced files but does authorize the same place of use as File Nos. 3,351; 4,814; 8,240 & 17,102. In 2018 the reported well depth was 430 feet.

The distance between the wells proposing to change is approximately 2,419 feet. The source of supply for all the wells has been designated as the Ogallala (Code 211) Formation and the Dakota Formation (Code 331) was identified for File No. 22,167 but this appears to be a WRIS database update that afforded the identification of more than one source of supply. Based on the well depths and logs all of the wells should have both sources of supply listed and will be updated in the WRIS database for the senior files. The local source of supply remains as developed.

The proposed changes appear to comply with part(b) of K.A.R. 5-23-3, *Minimum well spacing requirements: high plains aquifer*, as the approvals will move the authorized diversions is less than 2,640 feet. As this is a “flip-flop” or switch between the two (2) existing points of diversion it could allow 1,523.46 acre-feet more to be pumped from the Eastern well under File Nos. 3,351; 4,814; 8,240 & 17,102. When File Nos. 3,351; 4,814; 8,240 & 17,102 move to the East, the distance between the three wells authorized by these overlapping files will increase. The nearest well (ID 6) being approximately 4,160 feet to the Southwest and the well in Section 7 approximately 7,566 feet away.

The applicant has indicated there are no domestic wells located within one-half ($\frac{1}{2}$) mile of either proposed existing point of diversion. There is one irrigation well under File No. 4,107, located in the Southwest corner of 31-28-39W, that is within one-half ($\frac{1}{2}$) mile of the well proposed under File No. 22,167. The nearby well, File No. 4,107, is located approximately 2,130 feet to the North of the well currently authorized by Nos. 3,351; 4,814; 8,240 & 17,102, has historically not met the required 2,300 feet of well to well spacing, due to the authorized quantities of both wells exceeding 500 AF. The change will move the larger annual quantity away from the nearby well. The move of File No. 22,167 to the West existing well, has been indicated to not meet the required spacing to the well under File No. 4,107, due to the quantity of 640 AF authorized by this nearby well. The 319.2 AF authorized by File No. 22,167 requires 1,900 feet of well to well spacing per Part (a) of K.A.R. 5-23-3, *Minimum well spacing requirements: high plains aquifer*, but the 2,130 feet of well to well spacing of the irrigation wells does not meet the required spacing of 2,300 feet per K.A.R. 5-23-3, for File No. 4,107. A **waiver of Part (a) of K.A.R. 5-23-3** was requested by the owners.

Review of the proposed changes by Kansas Groundwater Management District No. 3 found no critical wells in the area and their expanded area of comment did not result in any replies. The Board review resulted in two votes against the proposed change, but the majority supported the requested waiver. In a letter dated August 15, 2024, Jason Norquest, Assistant Manager, stated that the Board of the Southwest Kansas Groundwater Management District No. 3, **recommended approval of the changes and a waiver of K.A.R. 5-23-3**.

After a review of the proposed changes, Michael Meyer, Water Commissioner of the Garden City Field Office, indicated that he recommended approval of the proposed changes as per his email of August 20, 2024.

The changes in points of diversion will require water flowmeters meeting the specifications of the Chief Engineer to be installed and Notice of Completion. Check valves will also be required if chemigating. Water level measurements tubes and WWC-5 logs will not be required as no new wells will be drilled.

Based on the above discussion and the approval of the requested waiver, the changes appear to be reasonable, that impairment to existing water rights is unlikely, the local source of supply remains unchanged, it is recommended that the referenced applications be approved.



Leslie Ireland
Environmental Scientist
Water Appropriation Program

Ireland, Leslie [KDA]

From: Meyer, Mike [KDA]
Sent: Tuesday, August 20, 2024 10:32 AM
To: Ireland, Leslie [KDA]
Subject: RE: Review and Recommendation of Changes in PD, File Nos. 3,351; 4,814; 8,240; 17,102 & 22,167

On your waiver, you have file no. 4107 authorized for 639 AF, cert says 640 AF
Other than that I recommend this waiver and approval
I attending the gmd3 board meeting and also Lane and Earl were present to hear the discussion

Thanks

Mike

From: Ireland, Leslie [KDA] <Leslie.Ireland@ks.gov>
Sent: Tuesday, August 20, 2024 9:24 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: FW: Review and Recommendation of Changes in PD, File Nos. 3,351; 4,814; 8,240; 17,102 & 22,167

Mike,

I redid part of the memo as it appears one of the existing PD that will not change should have Lot 7 added. (PD qualifiers fixed). If it looks that way to you if not please let me know. Supporting documents attached...

I've also attached the waiver .. pretty straightforward.

Please let me know if you have any additional comments or concerns and if you'd recommend approval.

Thanks,

Leslie

From: Ireland, Leslie [KDA]
Sent: Friday, August 16, 2024 10:15 AM
To: Meyer, Mike [KDA] <Mike.Meyer@ks.gov>
Subject: Review and Recommendation of Changes in PD, File Nos. 3,351; 4,814; 8,240; 17,102 & 22,167

Mike,

Attached is the summary memo of the changes to move files between the existing wells that requires a waiver.

The GMD summary has also been attached.

Please let me know if you'd recommend the requested changes with the waiver.

As always comments and concerns are welcome.

Leslie Ireland

Environmental Scientist
Change Application Unit
Division of Water Resources



THE STATE  OF KANSAS

KANSAS DEPARTMENT OF AGRICULTURE
Mike Beam, Secretary of Agriculture

DIVISION OF WATER RESOURCES
Earl D. Lewis Jr., Chief Engineer

**APPROVAL OF APPLICATION
FOR
CHANGE IN POINT OF DIVERSION
WATER RIGHT
FILE NO. 8,240**

The Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, after due consideration of the written application of Keegan Nairn on behalf of Nairn & Nairn Farms, PO Box 493, Johnson, Kansas 67855, received in the office of the Chief Engineer on August 25, 2024, for approval of a change in the location of the point of diversion under the certificate of appropriation issued pursuant to the application for permit to appropriate water for beneficial use, as modified and amended by the Order of the Chief Engineer, dated April 25, 1969, approving the application to change the point of diversion and place of use, by the Correctional Order of the Chief Engineer, dated August 19, 1970, correcting the location of the authorized points of diversion, by the Order of the Chief Engineer, dated March 9, 1999, approving the application to change the place of use, by the Order of the Chief Engineer, dated November 19, 2007, approving the application to change the points of diversion, by the Findings and Order of the Chief Engineer, dated July 30, 2020, reducing the authorized place of use, by the Order of the Chief Engineer, dated December 12, 2022, approving the application to change the points of diversion and by the Order of the Chief Engineer, dated January 11, 2023, approving the application to change the place of use, finds that the change is reasonable and will not impair existing rights, that the change relates to the same local source of supply and that the application should be and is hereby approved.

The effective date of the change shall be the date this order is executed by the Chief Engineer, after which the authorized location of the points of diversion shall be:

one (1) well located in Lot 2 (NW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section 6, more particularly described as being near a point 4,536 feet North and 2,579 feet West of the Southeast corner of said section,

one (1) well located in Lot 7 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 6, more particularly described as being near a point 848 feet North and 4,503 feet West of the Southeast corner of said section, and

one (1) well located in Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 7, more particularly described as being near a point 2,690 feet North and 5,140 feet West of the Southeast corner of said section,

all in Township 29 South, Range 39 West, Stanton County, Kansas,

located substantially as shown on the topographic map accompanying the application to change the point of diversion.

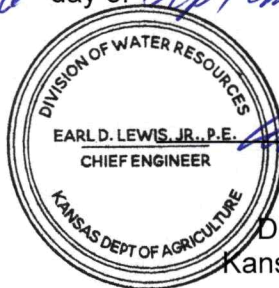
Installation of the works for diversion of water shall be completed on or before December 31, 2024, or within any authorized extension of time. The applicant shall notify the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, when construction of the works for diversion has been completed.

All diversion works into which any type of chemical or other foreign substance will be injected into the water pumped from the diversion works shall be equipped with an in-line, automatic, quick-closing check valve capable of preventing pollution of the source of the water supply. The type of valve installed shall meet specifications adopted by the Chief Engineer and shall be maintained in an operating condition satisfactory to the Chief Engineer.

The water right owner shall properly install acceptable water meters on the diversion works authorized under this water right, prior to the use of water, in strict accordance with the Kansas Administrative Regulations 5-1-4 through 5-1-12 adopted by the Chief Engineer. The water right owner shall notify the Chief Engineer when installation of the water meters has been completed. The water right owner shall maintain the water meters in an operating condition satisfactory to the Chief Engineer, at all times during diversion of water and shall maintain records from which the total quantity of water diverted may be determined. The water right owner shall also report the reading of said water meters and the total quantity of water diverted annually to the Chief Engineer. Such records shall be furnished to the Chief Engineer by March 1 following the end of each calendar year.

In all other respects, the Certificate of Appropriation issued pursuant to Approval of Application, File No. 8,240, for permit to appropriate water for beneficial use, is as stated and set forth in the Certificate of Appropriation, dated April 24, 1969, as modified and amended by the aforementioned orders.

Ordered this 16th day of September, 2024, in Manhattan, Riley County, Kansas.



Earl D. Lewis Jr.
Earl D. Lewis Jr., P.E.
Chief Engineer
Division of Water Resources
Kansas Department of Agriculture

State of Kansas)
) SS
County of Riley)

The foregoing instrument was acknowledged before me this 16 day of September, 2024, by Earl D. Lewis Jr., P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

[Signature]
Notary Public



1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov



900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

September 19, 2024

KEEGAN NAIRN
NAIRN & NAIRN FARMS
PO BOX 493
JOHNSON KS 67855

RE: Water Right
File Nos. 3,351, 4,814, 8,240, 17,102 and 22,167

Dear Mr. Narin:

Enclosed are the orders executed by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, approving the applications for change under the above referenced files.

Your attention is directed to the enclosures and to the terms, conditions, and limitations specified in the approval for change. A condition of the approvals is that water flowmeters meeting K.A.R. 5-1-4 through 5-1-12 must be installed on the diversion works authorized. Please return the required notification of completion of the diversion works and installation of the required meter. Additional information and the Notice of Completion form may be found on our website at agriculture.ks.gov/dwr. There is no fee required for the notification.

Since these orders modify the certificates of appropriation for the above referenced water rights, they should be recorded with the Register of Deeds as other instruments affecting real estate.

If you have any questions or need assistance with any of these requirements, please contact our office at 785-564-6640, or your local Garden City Field Office at 620-276-2901. If you call, please reference the file number so we can help you more efficiently.

Sincerely,

Kristen A. Baum
New Application Unit Supervisor
Division of Water Resources

KAB:kak:li

Enclosure(s)

pc: Garden City Field Office
Southwest Kansas GMD No. 3

RIGHT TO A HEARING AND TO ADMINISTRATIVE REVIEW

If you are aggrieved by this Order, then pursuant to K.S.A. 82a-1901, you may request an evidentiary hearing before the Chief Engineer or request administrative review by the Secretary of Agriculture. Failure to request an evidentiary hearing before the Chief Engineer does not preclude your right to administrative review by the Secretary.

To obtain an evidentiary hearing before the Chief Engineer, a written request for hearing must be filed within 15 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 18 days after this Order was mailed to you**), with: Kansas Department of Agriculture, Attn: Legal Division, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX 785-564-6777.

If you do not file a request for an evidentiary hearing before the Chief Engineer, you may petition for administrative review of the Order by the Secretary of Agriculture. A petition for review shall be in writing and state the basis for requesting administrative review. The request for review may be denied if the request fails to clearly establish factual or legal issues for review. See K.S.A. 77-527. The petition must be filed within 30 days after service of this Order as provided in K.S.A. 77-531 (**i.e., within a total of 33 days after this Order was mailed to you**), and be filed with: Secretary of Agriculture, Attn: Legal Division, Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, FAX 785-564-6777.

If neither a request for an evidentiary hearing nor a petition for administrative review is filed as set forth above, then this Order shall be effective and become a final agency action as defined in K.S.A. 77-607(b). Failure to timely request either an evidentiary hearing or administrative review may preclude further judicial review under the Kansas Judicial Review Act.

CERTIFICATE OF SERVICE

On this 19 day of September, 2024, I hereby certify that the attached Change Orders, for Water Right, File Nos. 3,351, 4,814, 8,240, 17,102 and 22,167, dated September 16, 2024, were mailed postage prepaid, first class, US mail to the following:

KEEGAN NAIRN
NAIRN & NAIRN FARMS
PO BOX 493
JOHNSON KS 67855

With a Photocopy to:

KDA-DWR Garden City Field Office

Southwest Kansas GMD No. 3



Staff